IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 257 OF 2006.

Prabhakar Sadanand Potdar. ... Appellant.
Versus.
Udaykumar Shantaram Potdar & ors. ... Respondents.

Shri A.G.Damle for the Appellant.

CORAM : ABHAY S.OKA, J.

DATED : 2nd May, 2006.

P.C.:

1. Heard Shri Damle for the Appellant. He submitted that apart from the fact that the sale deed dated 1st February 1984 executed by the Appellant's father was obtained by fraud, by the said sale deed the father has purported to transfer the joint family property and therefore the said sale was not binding on the Appellant. He submitted that merely because the sale deed recites that the property was self acquired property of the father Sadanand, the Courts below should not have jumped to the conclusion that the property was self acquired property. He submitted that the finding given by the Appellate Court on the issue of limitation is erroneous inasmuch as by no stretch of imagination the suit was barred by limitation.

2. I have considered the submissions. Both the Courts below have held that the Appellant has failed to establish that the sale deed was vitiated by any fraud or misrepresentation. Apart from the recital in the

sale deed, the Appellate Court has recorded a finding that the witness examined by the Appellant viz. Hemlata who is his sister stated in her evidence that the suit property was the exclusive and absolute property of the Appellant's father. Thus the Appellate Court has relied not only upon the recitals in the sale deed but also on the deposition of the daughter of the executant of the sale deed who has been examined as witness by the Appellant himself. This finding of fact that the Appellant had no right, title and interest in the suit property is based on appreciation of the oral and documentary evidence on record. If the execution of sale deed by the Appellant's father is duly proved and the property was his self acquired property, it is very difficult to find fault with the approach of the courts below. In view of this position, it is not necessary to consider the submission made by the Advocate for the Appellant as regards limitation. No substantial question of law arises. Second Appeal is dismissed.

Judge.